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8 Attorneys for Defendant
9 **MILAROSE NILOOBAN**

FILED
DISTRICT COURT OF GUAM

MAY 30 2006

MARY L.M. MORAN
CLERK OF COURT

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF GUAM**

9 ELIZABETH TOLOSA-TAHA) CIVIL CASE NO. 06-00002
10)
11 Plaintiff,)
12 vs.) MOTION TO DISMISS; MEMORANDUM
13) OF POINTS AND AUTHORITIES;
14) CERTIFICATE OF SERVICE
15 MILAROSE NILOOBAN, NILO)
16 NILOOBAN, THE TESTATE AND)
17 INTERSTATE SUCCESSORS OF EDGAR)
18 G.M. TOLOSA, DECEASED, AND ALL) [ORAL ARGUMENT REQUESTED]
19 PERSONS CLAIMING BY, THROUGH)
20 OR UNDER SUCH EDGAR G.M.)
21 TOLOSA; ALL PERSONS UNKNOWN,)
22 CLAIMING ANY LEGAL OR EQUITABLE)
23 RIGHT, TITLE, ESTATE, LIEN, OR)
24 INTEREST IN THE PROPERTY)
25 DESCRIBED IN THE COMPLAINT)
ADVERSE TO PLAINTIFF'S TITLE, OR)
ANY CLOUD ON PLAINTIFF'S TITLE)
THERE TO; AND DOES 1 to 50,)
INCLUSIVE,)
Defendants.)

22 **MOTION**

23 Defendant **MILAROSE NILOOBAN** ("NILOOBAN") through counsel, MAHER •
24 YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza, hereby moves this Court for an
25 order dismissing the Complaint in its favor.

ORIGINAL

1 This motion is made pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal
2 Rules of Civil Procedure, and is based on this Memorandum of Points and Authorities
3 filed contemporaneously herewith, the supporting Declarations and evidence served
4 and filed herewith, the record of the proceedings and papers on file herein, together
5 with any and all arguments to be adduced at the hearing of the within entitled motion.

6 Dated this 30th day of May, 2006.

7 **MAHER . YANZA . FLYNN . TIMBLIN, LLP**
8 Attorneys for Defendant
9 **MILAROSE NILOOBAN**

10
11 By: 

12 **LOUIE J. YANZA**

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. FACTS**

15 The Plaintiff ELIZABETH TOLOSA-TAHA ("TAHA") is a resident of California.
16 Defendant NILOOBAN is a resident of Guam. In the Plaintiff's Complaint, the Plaintiff
17 has filed a claim for quiet title concerning real property located in Guam. The Plaintiff
18 claims she is the sole heir and wishes this Court to issue a decree holding her as the
19 legal titleholder to the real property. Amended Complaint, ¶8.

20 Defendant NILOOBAN is without knowledge of TAHA's rights to the property,
21 but Defendant NILOOBAN denies she has any claim of ownership in the property.
22 Defendant NILOOBAN is only a tenant in possession, without ownership rights to the
23 property.
24
25

1 Because Defendant NILOOBAN has no ownership rights to said property,
2 Defendant NILOOBAN asserts the Plaintiff fails to meet the amount in controversy
3 requirement of \$75,000 in this case and, therefore, this Court lacks subject matter
4 jurisdiction.

5 Lastly, no court has adjudged the Plaintiff as the sole or lawful heir of the
6 decedent's estate. Therefore, the Plaintiff lacks standing to assert this cause of
7 action.

8 9 II. ARGUMENT

10 A. THE PLAINTIFF FAILS TO MEET THE \$75,000 AMOUNT IN 11 CONTROVERSY.

12 The district courts have original jurisdiction in civil actions when the matter in
13 controversy exceeds the sum or value of \$75,000 between citizens of different states.
14 28 U.S.C. §1332(a)(1). The party asserting federal diversity jurisdiction bears the
15 burden of proving the case is properly in federal court. McNutt v. General Motors
16 Acceptance Corp., 298 U.S. 178 (1936).

17 Because diverse citizenship here is uncontested, the sole jurisdiction question
18 before the Court is whether the minimum amount in controversy, required to maintain
19 a diversity suit in federal court, is present. Since the Plaintiff asserts diversity
20 jurisdiction, the Plaintiff bears the burden of establishing, by a preponderance of the
21 evidence, that the amount in controversy exceeds \$75,000. Matheson v. Progressive
22 Specialty Insurance Company, 319 F.3d 1089 (9th Cir. 2003).

23
24 Here, the amount in controversy does not exceed \$75,000. The Defendant
25 concedes that she has never maintained, had, or made a claim of ownership in the

1 property at issue. Defendant NILOOBAN has only been a tenant in possession. If at
2 all, which the Defendant does not concede, there is a dispute between the Plaintiff
3 and the Defendant. The disputed amount between the two would only amount to
4 \$12,658.74, plus any allowable legal interest. See, Exhibit "A". The disputed amount
5 of \$12,658.74 utterly fails to satisfy the \$75,000 legal requirement. Therefore, as a
6 matter of law, since the Plaintiff's complaint fails to satisfy the \$75,000 "amount in
7 controversy" requirement, this Court lacks subject matter jurisdiction and this matter
8 must be dismissed.
9

10 **B. THE PLAINTIFF HAS NO STANDING TO SUE FOR QUIET TITLE.**

11 There has been no Guam Superior Court adjudication or probate opened of the
12 decedent, Edgar M. Tolosa's estate, which would adjudge or decree who are the
13 rightful heirs to the decedent's property.
14

15 Since the decedent's property is situated in Guam, the Superior Court of Guam
16 has jurisdiction for the probate of the decedent's estate:

17 **Probation Jurisdiction in Superior Court of Guam.** Wills
18 must be proved, and letters testamentary, letters of
19 administration with the will annexed, letters of administration or
special letters of administration granted, and administration of
estates of decedents had, in the Superior Court of Guam.

20 15 G.C.A. §1403.

21 During the administration of a decedent's estate, there must be an
22 administrator appointed by the court. 15 G.C.A. §1801. The administrator must be a
23 resident of Guam. Id. (citing same qualifications as executors of wills, 15 G.C.A.
24 §1701(c)(2)). Once the administrator is appointed by the Superior Court of Guam, the
25

1 court will then determine whether any child or heir is entitled to inherit the decedent's
2 estate. 15 G.C.A. §§815~817.

3 The Plaintiff is somehow under the impression that she is entitled to all of the
4 monies or properties of the estate because she claims she is an adopted child of the
5 decedent. The problem with the Plaintiff's position is that there has been no Superior
6 Court adjudication the Plaintiff is the lawful heir of the decedent and is entitled to all
7 his properties. Probate of the decedent's estate must be opened to determine who
8 are the lawful heirs of the decedent. This has not been done. No court has appointed
9 the Plaintiff, or anyone, as the administrator of the decedent's estate, and the Plaintiff,
10 being a resident of California, woefully fails to meet the residency requirements of
11 administrator for the decedent's estate. Either the Plaintiff has prematurely filed the
12 lawsuit without opening probate, or is attempting to completely skirt administering the
13 decedent's estate so she will be adjudged to have quiet title to the property. In either
14 case, the Plaintiff cannot assert quiet title to the property, as she has no standing to
15 file suit.
16

17 **CONCLUSION**

18 Wherefore, Defendant NILOOBAN respectfully requests that this matter be
19 dismissed as there is no subject matter jurisdiction and the Plaintiff lacks standing.

20 Respectfully submitted this 30th day of May, 2006.

21 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**
22 Attorneys for Defendant
23 **MILAROSE NILOOBAN**

24 By: 

25 **LOUIE J. YANZA**

CERTIFICATE OF SERVICE

I, **LOUIE J. YANZA**, hereby certify that on the 30th day of May, 2006, I caused a copy of the annexed **MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES; CERTIFICATE OF SERVICE** to be served upon the parties hereto, by either delivering, faxing and/or mailing a copy of same to their attorney of record, as follows:

Gerald E. Gray, Esq.
213 E Buena Vista Avenue, Suite 202
Dededo, Guam 96929-5321
Counsel for Plaintiff Elizabeth Tolosa-Taha

Dated this 30th day of May, 2006.

MAHER . YANZA . FLYNN . TIMBLIN, LLP
Attorneys for Defendant
MILAROSE NILOOBAN

By: _____

LOUIE J. YANZA

1 EDNA V. WENNING, ESQ. (SBN 130377)
2 Law Offices of Edna V. Wenning
3 Monrovia, California 91016
4 Telephone: (626) 359-3219
5 Facsimile: (626) 359 4279

6 Attorney for Plaintiff
7 ELIZABETH TOLOSA-TAHA

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF GUAM

10 ELIZABETH TOLOSA-TAHA,) CIVIL CASE NO. 06-00002
11 Plaintiff,)
12 vs.) DISCLOSURES REQUIRED BY FRCP
13) RULE 26(a)(1)(A), (B), (D) AND RULES
14) 26(a)(2); CERTIFICATE OF SERVICE
15)
16 MILAROSE NILOOBAN, NILO)
17 NILOOBAN, et. al.,)
18 Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

21 COMES NOW, Elizabeth Tolosa-Taha, ("TAHA") through counsel EDNA V. WENNING
22 and GERALD E. GRAY, and makes the following disclosures:

23 RULE 26 (a)(1)(A) DISCLOSURE

24 Elizabeth Tolosa-Taha - 940 Toulouse Way, Martinez, California 94553

25 (925) 285-5222; Plaintiff and administrator of the estate of

26 Edgar G.M. Tolosa
27
28

1
RULE 26 DISCLOSURES

Exhibit

A

1 RULE 26 (b)(1)(A) DISCLOSURE

2 Warranty Deed dated April 13, 1973 attached to the Complaint as Exhibit A;

3 Payoff Letter from the Bank of Hawaii dated June 13, 2002 attached as Exhibit B to
4 the Complaint;

5 Mortgage Note dated April 13, 1973 attached as Exhibit B to the Complaint;

6 Certificate of Death of Edgar M. Tolosa dated November 1, 1999 attached as Exhibit C
7 to the Complaint

8 Amended Certificate of Live Birth of Elizabeth Tolosa-Iaha attached as Exhibit D to the
9 Complaint;

10 Certification from the City Civil Registry Office of the Republic of the Philippines,
11 Quezon City, Metro Manila dated January 27, 2000 attached as Exhibit D to the Complaint;

12 Certification from the City Civil Registry Office of the Republic of the Philippines,
13 Quezon City, Metro Manila dated January 27, 2000 re adoption of Elizabeth Tolosa attached
14 as Exhibit D to the Complaint;

15 RULE 26 (c)(1)(D) DISCLOSURE

16 Unpaid Rent from May 2, 2002 through May 9, 2006 at \$279.19 per month x 46 months
17 = \$ 12,658.74 plus allowable legal interest. Damages may be continuing if the Niloobans
18 continue to occupy the premises. Additional amount for clean-up and repairs not included.

19 RULE 26 (d)(1)(D) DISCLOSURE

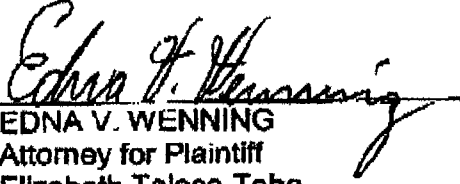
20 There is no insurance involved at this time

21 RULE 26 (e)(1)(D) DISCLOSURE

22 No experts are designated at this time.

Respectfully submitted

5/15/06
Dated


EDNA V. WENNING
Attorney for Plaintiff
Elizabeth Tolosa-Taha

Dated

GERALD E. GRAY
Designated Local Counsel
Attorney for Plaintiff
Elizabeth Tolosa-Taha

RULE 26 DISCLOSURES

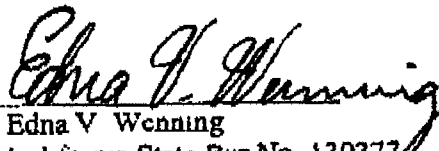
CERTIFICATE OF SERVICE

I hereby certify that on May 18th 2006 I have served a copy of the following document:

1. Disclosures Required by FRCP Rule 26(a)(1)(A), (B), (D) and Rules 26(a)(2), Certificate of Service addressed to counsel of record, by either delivering, faxing and/or mailing a copy of same to the following:

Louie J. Yanza
Maher Yanza.Flynn.Timblin, LLP
Governor Joseph Flores Building
Hagatna, Guam 96910

This 18th day of May, 2006


Edna V. Wenning
California State Bar No. 130377
Attorney for Plaintiff

289 Norumbega Drive
Monrovia, California 91016
(626) 359-3219